

RESPONSE TO RESTRICTION REQUIREMENT  
U.S. Serial No.: 09/932,503  
Page 2

REMARKS

The Examiner has required restriction among the following claims:

- Group I: Claims 1-8, drawn to compositions comprising a therapeutic agent associated with the core of calcium phosphate particles wherein a layer of casein at least partially covers the core of said particle;
- Group II: Claims 10-11, drawn to methods of making compositions comprising a therapeutic agent associated with the core of calcium phosphate particles wherein a layer of casein at least partially covers the core of said particle; and
- Group III: Claim 12, drawn to methods of delivering compositions comprising a therapeutic agent associated with the core of calcium phosphate particles wherein a layer of casein at least partially covers the core of said particle.

Applicant elects Group III, claim 12 with traverse.

The undersigned respectfully submits that the restriction requirement is erroneous and should be withdrawn. There are two criteria for a proper requirement for restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner. MPEP § 803. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." MPEP § 803 (emphasis added).

The undersigned respectfully submits that examination of the claims of the entire application will not impose a serious burden. With respect to the restriction between the groups, the undersigned respectfully submits that the Examiner has failed to establish any undue burden placed upon the PTO by the presence of more than one group in the same application.

## RESPONSE TO RESTRICTION REQUIREMENT

U.S. Serial No.: 09/932,503

Page 3

In order to advance the prosecution of this case, Applicant elects Group III, with traverse. Applicant requests, however, that Groups I and II be rejoined for further prosecution. The presence of the claims of Groups I and II in a single application does not impose an undue burden on examination. Once the Examiner searches "calcium phosphate particles at least partially covered by a layer of casein" that search will necessarily include methods in which those particles can be made.

RESPONSE TO RESTRICTION REQUIREMENT

U.S. Serial No.: 09/932,503

Page 4

CONCLUSION

Because this response is timely, no fees are believed due at this time. In the even that fees are due, the undersigned authorizes such fees to be charged to Deposit Account number 11-0855.

Respectfully submitted,



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